

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of: No. 09F-BD025-BNK

3 **PRESTON G. RUBIN DBA VILLA**  
4 **MORTGAGE**

5 11566 E. Saguaro Crest Place  
6 Tucson, AZ 85747

Petitioner.

**NOTICE OF HEARING**

RECEIVED

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O.A.H.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,  
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of  
9 Administrative Hearings, an independent agency, and is scheduled for October 14, 2008, at 1:30  
10 p.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona,  
11 (602) 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
17 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any  
18 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
19 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

20 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
21 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
22 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to  
23 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
24 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office  
25 of Administrative Hearings has designated Thomas Shedden, at the address and phone number listed  
26 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence  
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative  
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.  
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
16 made by a court reporter or by electronic means. Any party that requests a transcript of the  
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

#### 20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**  
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position  
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
4 Hearing. If the answering Petitioner is without or are unable to reasonably obtain knowledge or  
5 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which  
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner  
7 intends to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioner  
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised  
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**  
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
12 true and admitted and the Superintendent may take whatever action is appropriate, including  
13 suspension, revocation, denial of Petitioner's license or affirming an order to Cease and Desist and  
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial  
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy  
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must  
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are  
23 required, call the Office of Administrative Hearings at (602) 542-9826.

#### 24 **FACTS**

25 1. Petitioner Preston G. Rubin ("Mr. Rubin") is the owner of Villa Mortgage ("Villa"), a  
26 Trade Name registered with the Arizona Secretary of State. Preston G. Rubin dba Villa Mortgage is

1 authorized to transact business in Arizona as a mortgage broker, license number MB 0016118,  
2 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Villa's business is that of making,  
3 negotiating, or offering to make or negotiate loans secured by Arizona real property, within the  
4 meaning of A.R.S. § 6-901(6).

5 2. A December 27, 2007 through January 24, 2008 examination of Villa, conducted by the  
6 Department, revealed that Villa:

7 a. Contracted with or paid \$68,251.00 in compensation to unlicensed, independent  
8 contractors; specifically:

9 i. In 2006 and 2007, Petitioner paid two employees on a 1099 basis rather than  
10 as W-2 employees as required, specifically:

11 (1) In 2006, one employee was paid a total of \$27,727.00;

12 (2) In 2006, a second employee (the "Second Employee") was paid a total of  
13 \$25,928.00; and

14 (3) In 2007, one employee was paid a total of \$14,596.00;

15 b. Failed to update and reconcile the records of Villa Mortgage, which conduct has been  
16 acknowledged by Petitioner;

17 c. Failed to use an independent source when providing a value opinion to private  
18 investors; specifically:

19 i. Petitioner has used a value opinion supplied by the Second Employee, a non-  
20 independent source;

21 ii. The Second Employee received \$25,928.00 in 1099 compensation during  
22 2006; and

23 iii. The Second Employee and Petitioner have been members of a limited liability  
24 company since November 2001;

25 d. Failed to include all required information in its disclosure statement; specifically:

26 i. Failed to include information relative to the ability of the borrower to meet the

- 1 obligation of the mortgage loans;
- 2 ii. Failed to include the existence of any improvements on the property;
- 3 iii. Failed to include the terms and conditions of all liens on the property;
- 4 iv. Failed to include a statement as to whether the mortgage broker is acting as
- 5 principal or agent in the transaction;
- 6 (1) Petitioner's disclosure statement reflects that it is acting as principal and
- 7 agent in each transaction; and
- 8 (2) Petitioner was listed as only an agent to the transaction in 14 of the 15
- 9 files reviewed; and
- 10 v. Failed to provide its investor disclosure before the payment of any money by
- 11 an investor; specifically:
- 12 (1) The private investor disclosure was signed after acceptance of money in
- 13 four (4) of the fifteen (15) loans reviewed;
- 14 e. Failed to disclose an essential or material fact by failing to disclose a prior loan on a
- 15 loan application; specifically;
- 16 i. Petitioner originated and negotiated mortgage loans on two (2) different
- 17 properties for certain borrowers. Mr. Rubin was the loan officer for both
- 18 transactions; specifically:
- 19 (1) Transaction One (1) was a non-owner occupied, first mortgage
- 20 construction loan totaling \$130,000.00, funded July 23, 2007, on a
- 21 property located at 1225 Calle Avestruz, Rio Rico, Arizona;
- 22 (2) Transaction Two (2) was a non-owner occupied, refinance including a
- 23 first mortgage loan totaling \$14,400.00, funded August 13, 2007, on a
- 24 property located at 1227 Calle Avestruz, Rio Rico, Arizona;
- 25 (3) The mortgage loan file for Transaction Two contains a Fannie Mae loan
- 26 application (1003), dated August 2, 2007, which failed to disclose the

Transaction One mortgage loan on the Schedule of Real Estate Owned;  
and

(4) The mortgage loan file for Transaction One, contains a final HUD-1  
settlement statement that lists the settlement date as July 23, 2007;

f. Misrepresented the source of the value opinion used by Petitioner as coming from an  
appraiser; specifically:

i. The value opinion provided by the Second Employee, is printed on letterhead  
which states "Real Property County Appraiser/Certificate No. 1380";

ii. The Second Employee is not an approved real estate appraiser for the State of  
Arizona. Her name could not be found on the Arizona Board of Appraisers  
website; and

iii. Petitioner has confirmed that the Second Employee is not an approved  
appraiser; and

g. Failed to maintain a statutorily correct written agreement by failing to include a  
provision for accepting documents in connection with an application for a mortgage  
loan.

3. Based upon the above findings, the Department issued and served upon Villa a Notice of  
Assessment on July 15, 2008.

4. On August 15, 2008, Petitioner filed a Request For Hearing to appeal the Notice of  
Assessment.

### **LAW**

1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to  
regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,  
rules, and regulations relating to mortgage brokers.

2. By the conduct set forth in the Findings of Fact, Villa violated the following:

a. A.R.S. § 6-909(B) and A.A.C. R20-4-102 by contracting with or paying

1 compensation to unlicensed, independent contractors;

2 b. A.A.C. R20-4-917(C) by failing to update and reconcile the records of Villa  
3 Mortgage;

4 c. A.R.S. § 6-907(A) and A.A.C. R20-4-917(B)(6) by failing to use an independent  
5 source when providing a value opinion to private investors;

6 d. A.R.S. § 6-907(A) and A.A.C. R20-4-917(B)(6) by failing to include all required  
7 information in its disclosure statement;

8 e. A.R.S. § 6-909(L) by failing to disclose an essential or material fact by failing to  
9 disclose a prior loan on a loan application;

10 f. A.R.S. § 6-909(L) by misrepresenting the source of the value opinion used by  
11 Petitioner as coming from an appraiser; and

12 g. A.R.S. § 6-906(C) by failing to maintain a statutorily correct written agreement by  
13 failing to include a provision for accepting documents in connection with an  
14 application for a mortgage loan.

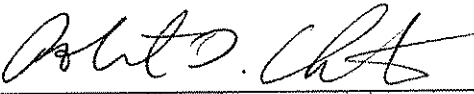
15 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
16 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
17 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
18 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
19 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
20 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any  
21 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
22 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

23 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
24 above-described violations, the Superintendent may affirm the July 15, 2008 Notice of Assessment,  
25 pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend or  
26 revoke Petitioner's license pursuant to A.R.S. § 6-905; and order any other remedy necessary or

proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S.  
§§ 6-123 and 6-131.

DATED this 8 day of September, 2008.

Felecia A. Rotellini  
Superintendent of Financial Institutions

By   
Robert D. Charlton  
Assistant Superintendent of Financial Institutions

ORIGINAL OF THE NOTICE OF HEARING filed  
this 8<sup>th</sup> day of September, 2008 in the office of:

Felecia A. Rotellini  
Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
Attn: Susan L. Longo  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

COPY of the foregoing mailed/delivered same date to:

Thomas Shedden, Administrative Law Judge  
Office of Administrative Hearings  
1400 W. Washington, Suite 101  
Phoenix, AZ 85007

Craig A. Raby, Assistant Attorney General  
Attorney General's Office  
1275 West Washington  
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent  
Brian R. Naig, Senior Examiner  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

AND COPY MAILED SAME DATE by  
Certified Mail, Return Receipt Requested, to:

Preston G. Rubin dba Villa Mortgage  
c/o Preston G. Rubin, Ower  
11566 E. Saguaro Crest Place  
Tucson, AZ 85747



1 Brick F. Storts, III, Esq.  
2 BARTON & STORTS  
3 271 N. Stone Avenue  
4 Tucson, AZ 85701-1526  
5 Attorneys for Petitioner

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